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6 Attorneys for Defendant
EASTERN MUNICIPAL WATER DISTRICT
7

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CALIFORNIA RIVER WATCH, an
11 IRC § 501(c)(3) nonprofit public benefit
12 corporation,

13 Plaintiff,

14 vs.

15 EASTERN MUNICIPAL WATER
DISTRICT,

16 Defendant.

Case No. 5:15-cv-01079 VAP (SPx)

**STIPULATED REQUEST RE
ENTRY OF JUDGMENT**

(Environmental – Clean Water Act,
33 U.S.C. § 1251, et seq.)

The Honorable Virginia A. Phillips

1 Pursuant to Civil Local Rule 7-1, Plaintiff California River Watch (CRW)
2 and Defendant Eastern Municipal Water District (together, Parties), by and through
3 their respective counsel of record, stipulate to the following:

4 WHEREAS, this Clean Water Act action was filed by CRW on June 2, 2015
5 (Doc. 1), in which CRW alleged Clean Water Act violations based on its
6 understanding of Eastern Municipal Water District's operations;

7 WHEREAS, Eastern Municipal Water District, after reviewing the original
8 complaint, informed CRW that it intended to file a Rule 12 motion to dismiss as to
9 certain claims in the original complaint and the Parties thereafter discussed the
10 substance of that motion as required by Civil Local Rule 7-3;

11 WHEREAS, on August 26, 2015, CRW served Eastern Municipal Water
12 District with a supplemental Clean Water Act 60-day notice letter;

13 WHEREAS, on August 31, 2015, CRW filed its First Amended Complaint
14 (Doc. 11);

15 WHEREAS, on September 23, 2015, Eastern Municipal Water District filed
16 an Answer and Jury Demand in response to the First Amended Complaint (Doc.
17 12), denying CRW's claims that it had violated the Clean Water Act.

18 WHEREAS, on November 30, 2015, CRW filed a Second Amended
19 Complaint (Doc. 20);

20 WHEREAS, at the December 14, 2015 Scheduling Conference, this Court
21 granted Eastern Municipal Water District's request (a) to file an evidentiary
22 Rule 12(b)(1) motion to dismiss for lack of Article III standing, (b) to stay
23 discovery on all issues, except for those relating to Article III standing, and (c) to
24 set a briefing and hearing schedule on the motion;

25 WHEREAS, on December 31, 2015, Eastern Municipal Water District filed
26 an Answer and Jury Demand in response to the Second Amended Complaint (Doc.
27 29);

28 WHEREAS, between December 2015 and February 2016, the Parties

1 exchanged multiple letters and had several conversations by phone concerning
2 Eastern Municipal Water District's Rule 12(b)(1) motion and related discovery
3 matters;

4 WHEREAS, on January 21, 2016, the Parties served initial disclosures;

5 WHEREAS, on February 2 and 3, 2016, Eastern Municipal Water District
6 served deposition notices/subpoenas concerning Article III standing;

7 WHEREAS, on February 4, 2016, CRW served its written responses to
8 Eastern Municipal Water District's first set of written discovery (i.e., Article III
9 discovery);

10 WHEREAS, on February 8, 2016, the Parties met and conferred by telephone
11 to address discovery issues and deposition scheduling;

12 WHEREAS, on February 9, 2016, CRW informed Eastern Municipal Water
13 District that it wished to voluntarily dismiss this action;

14 WHEREAS, CRW has agreed to resolve this action in favor of Eastern
15 Municipal Water District via the entry of a judgment of dismissal with prejudice,
16 and further agrees that the preclusive effect of that judgment shall extend equally to
17 the original complaint (Doc. 1), the First Amended Complaint (Doc. 11) and the
18 operative Second Amended Complaint (Doc. 20);

19 WHEREAS, CRW hereby releases all claims that were asserted or could
20 have been asserted against Eastern Municipal Water District at any point in time in
21 this action based on the allegations in the original complaint (Doc. 1), the First
22 Amended Complaint (Doc. 11) or the operative Second Amended Complaint (Doc.
23 20);

24 WHEREAS, CRW agrees not to commence any future legal action against
25 Eastern Municipal Water District relating to alleged violations of the Clean Water
26 Act (33 U.S.C. § 1251, *et seq.*) for a period of eight (8) years (Covenant Not To Sue
27 Period) and the Covenant Not To Sue Period shall begin on the date that judgment
28 is entered;

1 WHEREAS, CRW agrees not to commence any future legal action against
2 Eastern Municipal Water District relating to alleged violations of any other
3 environmental statute (e.g., the Endangered Species Act, 16 U.S.C. § 1531, *et seq.*)
4 based on its activities as a POTW for a period of eight (8) years (Covenant Not To
5 Sue Period) and the Covenant Not To Sue Period shall begin on the date that
6 judgment is entered in this action;

7 WHEREAS, to the extent it applies, CRW, in agreeing to the release
8 language above and after consulting with its counsel, knowingly and intentionally
9 waives any rights or benefits it may otherwise have had under California Civil
10 Code section 1452, and agrees that any potential future claims covered by the
11 release language (including the covenant not to sue) above would not have
12 materially affected its decision to agree to that release language;

13 WHEREAS, in exchange for CRW's stipulation to the entry of a judgment of
14 dismissal with prejudice, release of claims, and covenant not to sue, Eastern
15 Municipal Water District agrees not to seek or file any action for costs, fees, or
16 damages against CRW based on events surrounding this action;

17 WHEREAS, no monetary consideration has been exchanged between the
18 Parties;

19 WHEREAS, Eastern Municipal Water District is not agreeing to undertake
20 any obligation not otherwise identified in this stipulation;

21 WHEREAS, the Parties agree to the entry of judgment in form reflected in
22 **Exhibit A** (Judgment of Dismissal with Prejudice in Favor of Defendant Eastern
23 Municipal Water District and Against Plaintiff California River Watch);

24 WHEREAS, the Parties agree that entry of judgment in the form proposed by
25 the Parties will resolve this litigation;

26 WHEREAS, the Parties agree that the terms of this stipulation shall take
27 effect only if the Court enters judgment as proposed by the Parties;

28 NOW THEREFORE, the Parties respectfully and jointly request that the

1 Court enter judgment in the mutually agreed upon form reflected in **Exhibit A**
2 (Judgment of Dismissal with Prejudice in Favor of Defendant Eastern Municipal
3 Water District and Against Plaintiff California River Watch). That proposed
4 judgment has also been filed separately with the Court.

5 Pursuant to the Court's Standing Order and the Civil Local Rules, counsel for
6 Eastern Municipal Water District, Mr. Navi Singh Dhillon, has submitted a
7 declaration in support of this request.

8 Respectfully submitted,

9 Dated: March 17, 2016

MORRISON & FOERSTER LLP

11 By: /s/ Christopher J. Carr

12 CHRISTOPHER J. CARR

13 Attorneys for Defendant
14 EASTERN MUNICIPAL
15 WATER DISTRICT

16 Dated: March 17, 2016

LAW OFFICE OF JACK SILVER

18 By: /s/ Jack Silver

19 JACK SILVER

20 Attorneys for Plaintiff
21 CALIFORNIA RIVER WATCH

22 Dated: March 17, 2016

LAW OFFICE OF DAVID J. WEINSOFF

24 By: /s/ David J. Weinsoff

25 DAVID J. WEINSOFF

26 Attorneys for Plaintiff
27 CALIFORNIA RIVER WATCH
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ECF ATTESTATION

I, Christopher J. Carr, hereby attest that Mr. Jack Silver and Mr. David J. Weinsoff concur in this filing. This attestation is made pursuant to Civil L.R. 5-4.3.4.

EXHIBIT A

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EASTERN MUNICIPAL WATER DISTRICT

8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

10 CALIFORNIA RIVER WATCH, an
11 IRC § 501(c)(3) nonprofit public benefit
12 corporation,

13 Plaintiff,

14 vs.

15 EASTERN MUNICIPAL WATER
DISTRICT,

16 Defendant.

Case No. 5:15-cv-01079 VAP (SPx)

**[PROPOSED] JUDGMENT OF
DISMISSAL WITH PREJUDICE
IN FAVOR OF DEFENDANT
EASTERN MUNICIPAL WATER
DISTRICT AND AGAINST
PLAINTIFF CALIFORNIA RIVER
WATCH**

(Environmental – Clean Water Act,
33 U.S.C. § 1251, et seq.)

The Honorable Virginia A. Phillips

1 On June 2, 2015, plaintiff California River Watch commenced this Clean
2 Water Act (CWA) action against defendant Eastern Municipal Water District.
3 California River Watch alleged a variety of CWA claims, all of which were denied
4 by Eastern Municipal Water District.

5 California River Watch was represented by Jack Silver and David J.
6 Weinsoff. Christopher J. Carr and Navi Singh Dhillon of Morrison & Foerster LLP
7 represented Eastern Municipal Water District.

8 In accordance with the stipulated request of the parties, and good cause
9 appearing,

10 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

11 1. Judgment shall be and hereby is entered in favor of Defendant Eastern
12 Municipal Water District and against California River Watch and this action is
13 hereby dismissed with **PREJUDICE**.

14 2. Plaintiff California River Watch shall take nothing from Eastern
15 Municipal Water District.

16 3. Each Party shall bear its own fees and costs.

17
18
19 DATED:

By:

Virginia A. Phillips
United States District Judge